

Music Sampling and Copyright Law

The area of sampling is a minefield and can cause many problems for people who do not know when to clear a sample or indeed where to go to do so. This fact-sheet has been created to give a brief introduction to the topic of sampling and is only intended as such. Further information on this subject should be sought from MCPS (Ireland) or a music industry lawyer.

When the term "sampling" is used in this fact-sheet it means to sample another work within your own work. Examples of this would be where Will Smith has sampled Kool and the Gang and other artists and made loops from these samples to be used in his own work. "Sampling" within the context of this fact-sheet does not refer to "quoting", i.e. singing a line from someone else's song within your own song.

The following is a list of the most frequently asked questions regarding sampling and sample clearance.

If I sample a line from a song why do I have to get it cleared?

When you sample another person's work without permission, you are automatically infringing two copyrights; the copyright in the sound recording and the copyright in the composition. The copyright in the sound recording is owned by the record company and is defined as the copyright inherent in the actual sound recording (i.e. master tape) itself. The copyright in the composition is owned by the writers and the publishers of the song and is defined as that body of exclusive rights granted by statute to authors for protection of their writings. To infringe a copyright is illegal so therefore you must clear your sample before you release or broadcast the work containing the sample.

How do I clear a sample?

The Mechanical Copyright Protection Society (Ireland) (MCPSI) will facilitate sample clearance. This means that they will not actually clear the sample for you but will identify and put you in touch with the copyright owners and advise you as to the steps you should take.

How much will it cost?

Each individual sample clearance fee will be different. It depends on a number of varying factors, e.g. the amount of records being manufactured which contain the sample, whether the sample is from a well known song or composed by a well known artist. However, there are two main ways of payment - :

1. A buy-out.

This means that you will pay a flat fee up front for the use of the sample.

2. An initial fee plus a percentage of the registered work.

This means that you will pay an initial fee up front but that the original copyright owners will also look for a percentage of the performance and mechanical royalties. This is fast becoming the most popular method of sample clearance as it is now widely known that songs which use samples can become very successful and receive a lot of airplay or be included on major albums and therefore the original copyright owners want a share of the income generated by this.

It should be noted that clearing a sample should be done sooner rather than later and always before a record is released. If you do not clear a sample and release the record, the copyright owners of the sample may sue you and claim a huge percentage of the royalties from the song leaving you with very little.

If I use a sample on my demo, do I still have to clear it?

There is no concept of a demo in law and therefore there is no distinction made between use of a sample on a demo and use of a sample on an album. The sample must be cleared but the fee you will pay is likely to be lower as the demo will not be broadcast or sold to a large audience unlike the use of a sample on a commercial release.

If the sample is less than 4 seconds in duration do I still have to clear it?

Regardless of the length of the sample, it must be cleared.

If I distort the sample so that it is unrecognisable, does it still have to be cleared?

Any use of a sample must be cleared regardless of whether effects have been used on the sample so as to make it unrecognisable.

Do I have to clear samples from sample CD's?

Sample CD's are available for sale and usually consist of short drum loops, vocal loops, guitar riffs, etc. These CD's are pre-cleared however there may be a limitation on the uses to which you can put them so it is wise to read the fine print on these CD's.

I am using a sample from a traditional Irish work/classical work. Do I still have to get it cleared?

The life of copyright for a song is the life of the author (i.e. the songwriter) plus seventy years. After this time the song is in the public domain which means that there is no copyright owner. Mistakes are often made regarding the copyright status of songs (i.e. whether they are in copyright or whether they are in the public domain). For example, many people think that "The Fields of Athenry" or "Danny Boy" are traditional Irish songs and are in the public domain, however both of these songs are in copyright and if sampled, would have to be cleared. You should always check the copyright status of songs if you have sampled them.

Article Source: [IMRO website](#)

September 16, 2007 –

Kanye West may seem like the big winner in this week's hip-hop battle royal with 50 Cent - but the real victor is likely '70s group Steely Dan, Walter Becker and Donald Fagen, along with disco duo Daft Punk.

Sixties' singer Laura Nyro and Sir Elton John are among the different artists West sampled to create his chart-topper "Graduation" - and are expected to get a healthy paycheck from its first week's 700,000-plus sales.

A 2004 law requires producers to pay original artists when reinterpreting - or sampling - their music. Experts say sampled artists usually ask for about 50 percent of the songwriting credit, which would add up to a serious payday for the dozen artists West borrowed from.

It is most financially advantageous to Daft Punk and Steely Dan. iTunes' current No. 1 single, West's "Stronger," heavily samples Daft Punk's manic 2001 hit "Harder, Better, Faster, Stronger."

Steely Dan is known for being notoriously tough on would-be samplers. The reclusive jazz-pop duo often requires 100 percent of the songwriting credit, leaving only a small amount - a "performance credit" - for the sampling artist. While nearly all songs on "Graduation" list West as a songwriter, the song "Champion" only lists Becker and Fagen.

From the "New York Post"